IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3832 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAFIK @ REHMAN S/O RAHIMBHAI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3832 of 2003

MR AR SHAIKH for Petitioner No. 1

MS NANDINI JOSHI, APP for Respondent No. 1-3

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/04/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- faather of the

detenu has challenged the legality and validity of the order of detention dated 17.8.2002 passed against him by the Commissioner of Police, Rajkot City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The detenu has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. The order of detention has been passed on 17.8.2002 and has been executed on the very same day along with the grounds of detention. On perusal of the papers supplied to the detenu, it transpires that the detenu was found involved in four criminal offences registered with "A" & "B" Division Police Stations of Rajkot City, details of which are as under:-

| Sr No. | Police Station | Cr.No.& Section | Articles Stolen |
|---|---|---|---|
| 1. | "A" Div. P.S. Rajkot City | 260/2002 Sec.379 of IPC | Luna Moped |
| 2. | "A" Div. P.S. Rajkot City | 463/2002 Sec.379 of IPC | Autorickshaw |
| 3. | "B" Div. P.S. Rajkot City | 473/2002 Sec.379 of IPC | Autorickshaw |
| 4. | "B" Div. P.S. Rajkot City | 478/2002 Sec.379 of IPC | Bajaj-80 Motorcycle. |

In all these offences, investigation was going on when the detenu was detained. While recording the subjective satisfaction, the detaining authority has also placed reliance on the statements of two secret witnesses who have branded the detenu as dangerous person.

3. Ld. counsel Mr.Kameen Shukla appearing for ld. counsel Mr. A.R.Shaikh for the detenu has taken me through the memo of the petition. The petitioner-detenu has challenged the legality and validity of the order on number of grounds. However, ld. counsel has concentrated his arguments on two main points. It is firstly submitted by ld. counsel Mr. Shukla that on the date of detention, the detenu was in judicial custody and was not enlarged on bail in any of the offences registered against him and, therefore, there was no reason for the detaining authority to pass the formal order of detention and bail application ought to have been resisted if preferred, by the ld. PP, till the culmination of trial in all the cases. This part has not been considered and same goes to the root of the validity of the order as subjective satisfaction of the detaining authority is vitiated.

4. The next point canvassed by the ld. counsel Mr. Shukla is that the alleged activities of the detenu cannot be said to be prejudicial to "public order" within the meaning of PASA. He has been wrongly branded as "dangerous person" and the Police Commissioner ought not to have exercised the powers vested under Section 3 of the PASA. It is submitted that for the sake of arguments if it is accepted that the petitioner-detenu was involved in all these four offences, even than it can be said to be activities prejudicial to the "law & order" and not the "public order". He has rightly placed reliance on the decision of this Court in the case of Ashok Jivraj @ Jivabhai Solanki v/s Police Commissioner, Surat & Others, 2000(1) GLH 393. In the cited decision, the detenu Ashok Jivraj was found involved in four different criminal cases and all these cases were offences against the body of a person. There were statements of independent witnesses against the detenu. By referring the decision of Mustakmiya Jabbarmiya Shaikh v/s M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268 (SC) and the ratio of the decision of Arun Ghosh v/s State of West Bengal, reported in 1970(1) SCC P.98, it has been observed that the stray incidents would not affect the public order and the order of detention cannot be passed in such cases. In the cited decision, this Court has also observed that "looking to the incident, the case falls under the maintenance of law and order and not the public order". On facts, when court reaches to a conclusion that the case falls under the maintenance of law and order and not the public order, the subjective satisfaction arrived at by the detaining authority does not remain valid. Unless it is found that the case falls

in the category of the activities adversely affecting the public order, the detaining authority has no jurisdiction to pass the order of detention. The order of detention under challenge, therefore, cannot sustain. Since aforesaid decisions squarely apply to the facts of the case of the present detenu, impugend order of detention requires to be quashed and set aside.

5. Other grounds assailing the validity and legality of the order are not required to be discussed as the order of detention cannot be sustained on the above-said two grounds canvassed by ld. counsel for the petitioner-detenu.

6. Ld. APP Ms. Nandini Joshi appearing for the State has resited the petition and submitted that the involvement in similar offences at regular interval has created fear in the mind of public at large and esepcially in the minds of those who are parking their vehicles on a public road. In the present case, the detnu is even found committing theft of autorickshaw. This goes to show that detenu is a habitual offender and hence the subjective satisfaction arrived at by the detaining authority is just and proper and requires no interference. She has placed reliance on two decisions of this Court; viz; (i) Premsing @ Pallu Jesing Rajput v/s State of Gujarat & Others, 1999(1) GLH 648, and (ii) Amanullakhan Kudratallakhan Pathan v/s State of Gujarat & Others, 1999(1) GLH 1003. The cited decisions refer about magnitude as well as gravity of the offences committed. The detenu was found involved in the offences punishable under Section 379 of IPC. The Court has considered the magnitude as well as gravity of the offence and on facts, the Court was satisfied that the subjective satisfaction arrived at by the authority as to apprehension of disruption of the "public order" was found correct. So, on facts, above cited two decision would not help the respondents in the present petition.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17.8.2002 passed by the Commissioner of Police, Rajkot City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

23-04-2003 [ C. K.BUCH, J]
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